(1)

Supreme Court, U.S.
FILED

97 695 AUG 18 1997

No. ~~OFFICE OF THE~~ CLERK

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1996

John S. Faria, *Petitioner,*

vs.

R. Gary Clark,
as Tax Administrator, *Respondent.*

On Petition for a Writ of Certiorari
to the State of Rhode Island
Sixth Division District Court

John S. Faria
198 Front Street
Lincoln, Rhode Island
401-726-5660

19 pp

QUESTION PRESENTED

Whether Rhode Island General Law [R.I.G.L.] § 8-8-26 can be applied against John Faria to prevent him from obtaining judicial review of alleged tax deficiencies totaling approximately $100,000 which he could not prepay as required by said statute, when plain and unambiguous provisions of the constitutions for the State of Rhode Island and for the united States of America guarantee him freedom from discrimination for not being able to prepay, and meaningful and enforceable rights to redress of grievances, to due process of law, and to equal protection of the laws.

TABLE OF AUTHORITIES CITED

Page

CASES

Marbury v Madison, 5 US 137 . . . 12

CONSTITUTION - U.S.

Fourteenth Amendment, § 1 . . . 2, 11

CONSTITUTION - R.I.

Article I, § 2 . . . . . 3, 11

Article I, § 5 . . . . . 3, 11

Article I, § 21 . . . . . 3, 11

STATUTES AND RULES

28 U.S.C. 1257(a) 2

R.I.G.L. § 8-8-26 . . 3, 5, 9, 10, 12

OTHER

Magna Carta, Article 40 11

TABLE OF CONTENTS

	Page
Question presented	i
Table of Authorities Cited	ii
Opinions below	1
Jurisdiction	2
Statutory Provisions Involved	2
Statement of the Case	4
Reason for Granting the Petition	9
Conclusion	13
Appendix A - Judgment	1a
Appendix B - Order denying discretionary review	2a

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1996

John S. Faria, *Petitioner,*

vs.

R. Gary Clark,
as Tax Administrator, *Respondent.*

On Petition for a Writ of Certiorari
to the State of Rhode Island
Sixth Division District Court

John Faria respectfully petitions that a writ of certiorari issue to review the judgment entered in this case by the State of Rhode Island's Sixth Division District Court.

OPINIONS BELOW

No opinion on the merits was rendered by either the trial court or Rhode Island's Supreme Court. A copy of the trial court's judgment appears at Appendix A to this petition.

JURISDICTION

The date on which the Rhode Island Supreme Court entered an order denying discretionary review was on May 30, 1997. A copy of that decision appears at Appendix B.

The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves section 1 of the Fourteenth Amendment to the Constitution for the United States:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive ANY person of ... property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [emphasis added].

This case also involves three Rhode Island constitutional

provisions:

> "No person shall be deprived of ... property without due process of law, nor shall any person be denied equal protection of the laws." Article I, section 2.
>
> "Every person ought to obtain right and justice freely, and without purchase, completely and without denial..." Article I, section 5.
>
> The citizens have a right in a peaceable manner... to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition..." Article I, section 21.

This case also involves one Rhode Island statute, § 8-8-26:

> "A taxpayer's right to file a complaint pursuant to § 8-8-25 for review of a final decision of the tax administrator ordering an assessment, deficiency or otherwise shall be conditional upon prepayment of all taxes, interest and penalties set forth in said assessment, deficiency or otherwise; Provided, however, that in lieu of said prepayment, the taxpayer may filed together with his or her complaint a motion for an exemption from the prepayment requirement. The

taxpayer shall set said motion down for hearing within twenty (20) days after the answer to the complaint is filed; otherwise, the motion shall be deemed to be denied. The court shall grant the motion if it determines both: (1) that the taxpayer has a reasonable probability of success on the merits; and (2) that the taxpayer is unable to prepay all taxes, interest and penalties set forth in said assessment, deficiency or otherwise. In making its determination on the issue of ability to prepay, the court shall consider not only the taxpayer's own financial resources but also the ability of the taxpayer to borrow the required funds. If the motion is denied, the taxpayer shall make prepayment within thirty (30) days of the entry of the court's order denying the motion; otherwise, the complaint shall be dismissed upon motion of the tax administrator."

STATEMENT OF THE CASE

On May 14, 1996 the respondent, R. Gary Clark ["Tax Administrator"], issued a final administrative decision against petitioner John S. Faria, d/b/a Linden Farms (a small convenience store) holding John Faria was a purported "taxpayer" of sales

taxes and ordering that two alleged sales tax deficiency determinations and accrued interest resulting in a total amount alleged due of $96,750.80 "must be paid" within thirty days.

On June 12, 1996, having timely exhausted available administrative remedies, John Faria filed timely in Rhode Island's Sixth Division District Court a complaint as provided by statute to appeal de novo and to set aside said administrative decision, and for a declaratory judgment. He filed with the complaint, as required by R.I.G.L. § 8-8-26, a motion for exemption from the statutory requirement to prepay the $96,750.80, which motion he timely set down for hearing.

At the August 21, 1996 hearing on the motion for exemption, John Faria

presented an affidavit which he later filed into the record attesting (1) he was unable to prepay, from his own resources or by borrowing, the taxes, interest and penalties set forth in the deficiencies; and (2) he had a reasonable probability of success on the merits. The Tax Administrator failed to furnish any competent evidence rebutting John Faria's evidence or and refused to produce any evidence John Faria ever agreed to such compelled performance, which otherwise would constitute inducement into slavery in violation of state and federal law. The court entered an order denying John Faria's motion for exemption from the prepayment requirement, but entered no written decision articulating and clarifying the determinations made as required by

the statute or the basis relied upon to deny John Faria's motion, if any.

On August 23, 1996 John Faria timely filed a motion to reconsider said order wherein he raised state and federal constitutional due process and equal protection claims prohibiting the District Court from discriminating against him by denying him any judicial remedy because he could not purchase justice by prepaying the $96,750.80.

On September 11, 1996 the same District Court judge denied the motion to reconsider but failed to enter any order or written decision articulating whether he properly considered John Faria's due process and equal protection claims.

On October 28, 1996 the District Court entered the final judgment or

order granting the Tax Administrator's motion to dismiss John Faria's complaint for his failure to prepay the alleged tax deficiencies [See Appendix A herein], which is the subject of this petition.

On November 15, 1996 John Faria timely filed a petition for issuance of a writ of certiorari with the State of Rhode Island's Supreme Court to review that final judgment. On May 30, 1997, said Supreme Court entered an order denying said petition.

REASON FOR GRANTING THE PETITION

The reason for granting the petition for a writ of certiorari is that the question presented is of fundamental importance. The question, restated, is simple: Can individuals and small businessmen be prevented from exercising their unalienable due

process rights to obtain judicial review of an administrative tax decision when they don't or are unable to prepay the alleged tax due, in this case roughly 100 thousand dollars? Can statutes such as § 8-8-26 be applied against individuals such as John Faria such that arbitrary state administrative action (the alleged deficiencies could just as easily have totaled $1,000,000.00) prohibit access to judicial remedies?

Application of § 8-8-26 makes it clear that individuals such as John Faria who cannot afford to prepay an alleged tax assessment or deficiency are being discriminated against and being denied the equal protection of the laws. The statute provides that individuals able to prepay the alleged tax are entitled to full judicial

review, regardless of whether or not they have any legitimate defense. John Faria on the other hand, since he cannot prepay, is not entitled to full judicial review. Instead of full judicial review, the statute, in situations where the individual cannot prepay, encourages the judge to become a sort of statutory pseudo-clairvoyant or prophet who arbitrarily rules on the "probability of success" on the merits without being required to enter any written decision explaining his reasoning. Thus § 8-8-26 as applied against John Faria unfairly and unlawfully gives wealthy litigants different and more favorable treatment.

Arbitrary judicial results of this nature were abhorred by this nation's founding fathers when they

insisted on constitutionally recognizing the fundamental right to a jury trial before depriving anyone of liberty or property, even if there appeared to be no real legal defense to the action. Article I, §§ 2, 5 and 21 of Rhode Island's constitution, depicted above, prohibit this sort of discrimination and arbitrary action.

Rhode Island's unqualified guarantee of judicial remedy to all without requiring any purchase of justice, as articulated in Article I, § 5 of its constitution, preserves an ancient principle of law which was articulated much earlier in Article 40 of the Magna Carta, which provides:

> "To none will we sell, to none deny or delay, right or justice." Magna Carta, Art. 40.

Section 1 of the Fourteenth Amendment to the Constitution for the

United States, also depicted above, likewise prohibits this sort of discrimination and denial of equal protection of the laws and of due process by States such as Rhode Island.

Further, this Court has held that:

> "The very essence of civil liberty certainly consists in the right of EVERY INDIVIDUAL to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection." Marbury v Madison, 5 US 137, 163 [emphasis added].

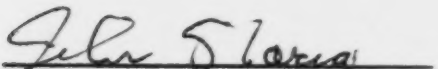
CONCLUSION

Rhode Island's Sixth Division District Court's judgment dismissing John Faria's complaint is an unconscionable and unconstitutional application of R.I.G.L. § 8-8-26 against him because said judgment violates the mandatory provisions of

the constitutions for Rhode Island and the United States as listed above, and gives the Tax Administrator a blank check to extort concessions and unjustly enrich the State at the expense of individuals and small businesses who do not have the resources to withstand arbitrary state agency action.

Wherefore, the petition for a writ of certiorari should be granted.

Respectfully presented,



John S. Faria
198 Front Street
Lincoln, Rhode Island
(401) 726-5660

STATE OF RHODE ISLAND DISTRICT COURT
PROVIDENCE, Sc. SIXTH DIVISION

JOHN S. FARIA, :
PLAINTIFF :
v. : A.A. No. 96-76
R. GARY CLARK, ALIAS :
AS TAX ADMINISTRATOR, :
DEFENDANT :

O R D E R

On October 28, 1996 the above-captioned case came to be heard before the District Court on the defendant Tax Administrator's motion to dismiss the complaint of plaintiff John S. Faria pursuant to R.I.G.L. §8-8-26.

Upon consideration thereof, it is hereby,

ORDERED, ADJUDGED AND DECREED that the Tax Administrator's motion to dismiss plaintiff John S. Faria's complaint pursuant to R.I.G.L. §8-8-26 is granted.

Appendix A

Supreme Court
No. 96-583-M.P.

John S. Faria :

v. :

R. Gary Clark, Alias, :
as Tax Administrator :

O R D E R

The petition for writ of certiorari is denied.

Entered as an Order of this court this 30th day of May 1997.

By Order,

Brian B. Burns
Clerk Pro Tempore